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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 LAURO GONZALEZ-ARIAS, on behalf of
15 the State of California, as a private
16 attorney general,

17 Plaintiff,

18 vs.

19 MXB BATTERY OPERATIONS, LP, a
20 Limited Partnership; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. **CGC-21-595759**

REPRESENTATIVE ACTION COMPLAINT
FOR:

1.Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
1198.5, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

10/05/2021

Clerk of the Court

BY: RONNIE OTERO

Deputy Clerk

1 Plaintiff Lauro Gonzalez-Arias (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against MXB Battery Operations, LP
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant MXB Battery Operations, LP (“DEFENDANT”) is a Limited
24 Partnership that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT provides hotel accommodations and hosts banquets and other
27 social functions.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from September of
2 2019 until June of 2020 and from September of 2020 until February of 2021 and was at all times
3 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
4 to the legally required meal and rest periods and payment of minimum and overtime wages due
5 for all time worked.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in
10 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
11 the time period of May 13, 2020 until a date as determined by the Court (the "PAGA
12 PERIOD").

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
17 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of
18 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
19 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
20 employees within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
28 responsible in some manner for one or more of the events and happenings that proximately

caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the other AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. PLAINTIFF and the other AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. Additionally, before clocking in, PLAINTIFF and the other AGGRIEVED EMPLOYEES, were required to wait in-line for a COVID-19 screening, one which included an on-line questionnaire about their current set of symptoms before being each employee was scanned and screened for a fever. PLAINTIFF was not allowed to clock in until this process was completed. Also, DEFENDANT, as a matter of established company policy and procedure, administered a uniform practice of rounding the actual time worked and recorded by

1 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so
2 that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES
3 were paid less than they would have been paid had they been paid for actual recorded time
4 rather than “rounded” time. DEFENDANT’s policy and practice not to pay PLAINTIFF and
5 other AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT’s
6 business records. As a result, DEFENDANT failed to pay PLAINTIFF and other AGGRIEVED
7 EMPLOYEES the proper minimum and overtime wages.

8 12. State law provides that employees must be paid overtime and meal and rest break
9 premium pay at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
10 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
11 tied to specific elements of an employee’s performance.

12 13. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
13 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
14 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
15 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
16 hourly basis with incentive compensation when the employees met the various performance
17 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
18 overtime and premiums for meal and rest break violations to PLAINTIFF and other
19 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
20 part of the employees’ “regular rate of pay” for purposes of calculating overtime pay and
21 premium pay for meal and rest break violations. As a matter of law, the incentive compensation
22 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the
23 “regular rate of pay.” The failure to do so has resulted in an underpayment of overtime
24 compensation and meal and rest break premium pay to PLAINTIFF and other AGGRIEVED
25 EMPLOYEES by DEFENDANT.

26 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
27 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
28 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees regularly earn

1 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
2 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
3 pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

4 15. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
5 employees be calculated by dividing the employee's total wages, not including overtime
6 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
7 of employment.

8 16. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
9 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
10 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
11 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
12 paid at the base rate of pay for PLAINTIFF and the other AGGRIEVED EMPLOYEES, as
13 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

14 17. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
15 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
16 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
17 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
18 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
19 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

20 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in
22 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
23 requires employers to pay employees all wages owed within eleven (11) days of the close of the
24 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
25 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
26 the payroll period.

27 19. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
28 to collect or receive from an employee any part of wages theretofore paid by said employer to

1 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
2 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
3 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
4 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
5 and thereby failed to pay these employees all wages due at each applicable pay period and upon
6 termination.

7 20. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
9 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
10 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
11 for more than five (5) hours during some shifts without receiving a meal break. Further,
12 DEFENDANT from time to time failed to provide PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
14 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
15 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
16 and in accordance with DEFENDANT’s corporate policy and practice.

17 21. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
18 were also required from time to time to work in excess of four (4) hours without being provided
19 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
21 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
22 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
23 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
24 PLAINTIFF and the other AGGRIEVED EMPLOYEES were also not provided with one hour
25 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
26 to provide employees with off-duty rest periods, which the California Supreme Court defined
27 as time during which an employee is relieved from all work related duties and free from
28 employer control. In so doing, the Court held that the requirement under California law that

1 employers authorize and permit all employees to take rest period means that employers must
2 relieve employees of all duties and relinquish control over how employees spend their time
3 which includes control over the locations where employees may take their rest period.
4 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
5 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
6 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
7 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
8 not leave the work premises during their rest period. As a result of PLAINTIFF being required
9 to be present on the premises he was from time to time required by DEFENDANT to work
10 during what should of been his off duty rest period.

11 22. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
12 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
13 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
15 time worked, meaning the time during which an employee was subject to the control of an
16 employer, including all the time the employee was permitted or suffered to permit this work.
17 DEFENDANT required these employees to work off the clock without paying them for all the
18 time they were under DEFENDANT's control. Specifically, PLAINTIFF worked through his
19 various meal and rest breaks as he was often interrupted by clients and their immediate needs.
20 This work also was done off-the-clock. As such, DEFENDANT knew or should have known
21 that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated for all
22 time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time
23 worked by working without their time being accurately recorded and without compensation at
24 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
25 the clock did not qualify for overtime premium payment, DEFENDANT failed to pay minimum
26 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
27 1197.1.

28 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify

1 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
2 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
3 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
4 2802, employers are required to indemnify employees for all expenses incurred in the course
5 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
6 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
7 employee in direct consequence of the discharge of his or her duties, or of his or her
8 obedience to the directions of the employer, even though unlawful, unless the employee, at
9 the time of obeying the directions, believed them to be unlawful."

10 24. In the course of their employment PLAINTIFF and other AGGRIEVED
11 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
12 personal cellular phones as a result of and in furtherance of their job duties as employees for
13 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
14 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
15 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
16 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
17 were not limited to, costs related to the use of their personal cellular phones, all on behalf of
18 and for the benefit of DEFENDANT.

19 25. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which
21 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code
22 § 226 provides that every employer shall furnish each of his or her employees with an
23 accurate itemized wage statement in writing showing, among other things, gross wages
24 earned and all applicable hourly rates in effect during the pay period and the corresponding
25 amount of time worked at each hourly rate. PLAINTIFF and the AGGRIEVED
26 EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all
27 applicable hourly rates during the pay period and the total hours worked, and the applicable
28 pay period in which the wages were earned pursuant to California Labor Code Section

1 226(a)(2). The wage statements DEFENDANT provided to PLAINTIFF and other
2 AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the
3 wage statements failed to identify the accurate total hours worked each pay period. When
4 the hours shown on the wage statements were added up, they did not equal the actual total
5 hours worked during the pay period. Additionally, DEFENDANT violated Section
6 226(a)(9) by failing to identify the correct rates of pay and number of hours worked,
7 including for the “Admin Pay” item of pay, which was a wage payment. Aside, from the
8 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
9 itemized wage statement that lists all the requirements under California Labor Code 226 *et*
10 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

12 26. During the PAGA PERIOD, pursuant to DEFENDANT’s company policies
13 and practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced to forfeit
14 gratuities left for them by customers to DEFENDANT’s agents who provided no service to
15 the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
16 18%-22% service charges to its food and beverage banquet bills. These service charges
17 were in the form of automatic charges which customers are required to pay, and which
18 reasonably appear to be gratuities for the service staff. It is typical and customary in the
19 industry that establishments impose gratuity charges in the range of 18%-22% of the food
20 and beverage bill. Thus, when customers have paid these charges, it is reasonable for them
21 to have believed they were gratuities to be paid to the service staff. Indeed, because many of
22 these charges are depicted to customers, and the custom in the food and beverage industry
23 that gratuities in the range of 18%-22% are paid for food and beverage service, customers
24 have paid these charges reasonably believing they were remitted to the service staff.
25 However, DEFENDANT has not remitted the total proceeds of these gratuities to the non-
26 managerial employees who serve the food and beverages. Instead, DEFENDANT has a
27 policy and practice of retaining for itself a portion of these gratuities and/or using a portion
28 of these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF

1 and other AGGRIEVED EMPLOYEES have not received the total proceeds of the
2 gratuities, to which they are entitled to under California law.

3 27. DEFENDANT is generally in the business of owning and operating a hotel,
4 including the pubs and restaurant on the premises. In addition, DEFENDANT also provides
5 banquet services to large groups, such as wedding parties and other banquet events. During
6 the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were in the
7 “chain of service” and earned gratuities based on their service for their customers.
8 However, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced to forfeit
9 portions of their gratuities, which said gratuities were kept by DEFENDANT and their
10 agents who were not in the chain of service from which the gratuity resulted. PLAINTIFF
11 and other AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT
12 were illegal and in violation of California law because PLAINTIFF and other AGGRIEVED
13 EMPLOYEES, not DEFENDANT, provided the service for to whom the gratuity should
14 have been paid.

15 28. California Labor Code § 351 establishes the requirements for an employer
16 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
17 employees. California Labor Code § 351 expressly prohibits employers and their agents
18 from collecting, taking, or receiving any portion of a gratuity. California Labor Code §
19 350(e) defines the term “gratuity” as including any money that has been paid or given or left
20 for an employee by a patron of a business over and above the actual amount due the business
21 for services rendered or for goods, food, drink or articles sold or served to such patron.
22 Labor Code § 353 requires employers to keep accurate records of all gratuities they receive,
23 directly or indirectly.

24 29. Although tip pooling is not expressly prohibited by the Labor Code, employees
25 who mandate tip pooling must only distribute pooled tips to employees in the “chain of
26 service.” By distributing tips to DEFENDANT directly and to their agents who were not in
27 the “chain of service,” DEFENDANT has violated and continues to violate the legal
28 requirements for handling pooled tips and violated the holding in *O’Grady v. Merchant*

1 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
2 Division Two.)

3 30. In violation of the applicable sections of the California Labor Code and the
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
5 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT
7 is intended to purposefully avoid the payment for all time worked as required by California
8 law which allows DEFENDANT to illegally profit and gain an unfair advantage over
9 competitors who complied with the law. To the extent equitable tolling operates to toll
10 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
11 should be adjusted accordingly.

12 31. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
13 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which
14 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
15 other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal
16 and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional
17 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
18 and/or pay all required compensation for work performed by the AGGRIEVED
19 EMPLOYEES and violated the California Labor Code and regulations promulgated
20 thereunder as herein alleged.

21 32. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
24 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
25 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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JURISDICTION AND VENUE

33. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

34. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

35. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

36. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

37. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private

1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to himself and all individuals who are or previously were employed by
3 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
4 EMPLOYEES") during the time period of May 13, 2020 until a date as determined by the
5 Court (the "PAGA PERIOD").

6 38. On May 13, 2021, PLAINTIFF gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
10 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
11 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
12 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

13 39. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
15 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
16 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
17 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
18 expenses, (f) failed to provide wages when due, and (g) failed to provide gratuities, all in
19 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
20 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
21 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
22 and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
23 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
24 Labor Code Private Attorney General Act of 2004 as the representative of the State of
25 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES.

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: October 5, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff